



DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Indiana

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and United States Fish and Wildlife Service (USFWS), DOI.

SUMMARY: This notice announces actions taken by the FHWA and the USFWS that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to proposed highway projects for a 21 mile segment of I-69 in the Counties of Monroe and Morgan, State of Indiana, and grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public that the FHWA and the USFWS have made decisions that are subject to 23 U.S.C. 139(l)(1) and are final within the meaning of that law. A claim seeking judicial review of those Federal agency decisions on the proposed highway project will be barred unless the claim is filed on or before January 24, 2014. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then the shorter time period applies.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Ms. Michelle Allen, Federal Highway Administration, Indiana Division, 575 North Pennsylvania Street, Room 254, Indianapolis, IN 46204-1576; telephone: (317) 226-7344; e-mail: Michelle.Allen@dot.gov. The FHWA Indiana Division Office's normal business hours are 7:30 a.m. to 4 p.m., e.t. For the USFWS: Mr. Scott Pruitt, Field Supervisor, Bloomington Field Office, USFWS, 620 South Walker Street, Bloomington, IN 47403-2121; telephone: (812) 334-4261; email: Scott_Pruitt@fws.gov. Normal business hours for the USFWS Bloomington Field Office are: 8 a.m. to 4:30 p.m., e.t. You may also contact Mr. Thomas Seeman,

Project Manager, Indiana Department of Transportation (INDOT), 100 North Senate Avenue, Indianapolis, IN 46204; telephone: (317) 232-5336; e-mail: TSeeman@indot.IN.gov. Normal business hours for the Indiana Department of Transportation are: 8 a.m. to 4:30 p.m., e.t.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has approved a Tier 2 Final Environmental Impact Statement (FEIS) for section 5 of the I-69 highway project from Evansville to Indianapolis and issued a Record of Decision (ROD) for section 5 on August 7, 2013. Section 5 of the I-69 project extends from the intersection of Victor Pike and State Road 37 (south of Bloomington) to south of the intersection of State Road 37 and State Road 39 (south of Martinsville). Section 5 generally follows the alignment of and upgrades State Road 37, an existing four-lane median divided highway, to a fully access-controlled highway. As approved in the Tier 1 ROD, the corridor is generally 2,000 feet wide. The ROD selected Refined Preferred Alternative 8 for section 5, as described in the *I-69 Evansville to Indianapolis, Indiana, Tier 2 Final Environmental Impact Statement Bloomington to Martinsville, Indiana* (FEIS), available at <http://www.i69indyevn.org/section-5-FEIS.html>. The ROD also approved the locations of the interchanges, grade separations, and access roads (which include new roads, road relocations, and realignments). The FHWA had previously issued a Tier 1 FEIS and ROD for the entire I-69 project from Evansville to Indianapolis, Indiana. A Notice of Limitation on Claims for Judicial Review of Actions by FHWA and United States Fish and Wildlife Service (USFWS), DOI, was published in the **Federal Register** on April 17, 2007. A claim seeking judicial review of the Tier 1 decisions must have been filed by October 15, 2007, to avoid being barred under 23 U.S.C. 139(1). Decisions in the FHWA Tier 1 ROD that were cited in that **Federal Register** notice included, but were not limited to, the following:

1. Purpose and need for the project.
2. Range of alternatives for analysis.
3. Selection of the Interstate highway build alternative and highway corridor for the project, as Alternative 3C.

4. Elimination of other alternatives from consideration in Tier 2 NEPA proceedings.
5. Process for completing the Tier 2 alternatives analysis and studies for the project, including the designation of six Tier 2 sections and a decision to prepare a separate environmental impact statement for each Tier 2 section.

The Tier 1 ROD and Notice specifically noted that the ultimate alignment of the highway within the corridor, and the locations and number of interchanges and rest areas would be evaluated in the Tier 2 NEPA proceedings. Those proceedings for section 5 of the I-69 project from Evansville to Indianapolis have culminated in the August 7, 2013 ROD and this Notice. Interested parties may consult the Tier 2, section 5 ROD and FEIS for details about each of the decisions described above and for information on other issues decided. The Tier 2, section 5 ROD can be viewed and downloaded from the project Web site at <http://www.i69indyevn.org/>. People unable to access the Web site may contact FHWA or INDOT at the addresses listed above. Decisions in the section 5, Tier 2 ROD that have final approval include, but are not limited to, the following: 1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]. 2. Endangered Species Act [16 U.S.C. 1531–1544]. 3. Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]. 4. Clean Air Act, 42 U.S.C. 7401–7671(q). 5. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]. 6. Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]. 7. Bald and Golden Eagle Protection Act [16 U.S.C. 688-688d].

Notice is hereby given that, subsequent to the earlier FHWA notices cited above, the USFWS has taken two final agency actions within the meaning of 23 U.S.C. 139(l)(1) by issuing: 1) “Amendment 2 to the Tier 1 Revised Programmatic Biological Opinion (dated August 24, 2006, previously amended May 25, 2011) for the I-69, Evansville to Indianapolis, Indiana Highway” dated July 24, 2013, and, 2) an individual Biological Opinion, dated July 25, 2013, for the Tier 2, section 5, 21 mile I-69 project in Monroe and Morgan counties, that concluded that the section 5 project was not likely to jeopardize the continued existence of the Indiana bat and was not likely to adversely modify the bat’s designated Critical Habitat.

Previous actions taken by the USFWS for the Tier 1, I-69 project, pursuant to the Endangered Species Act, 16 U.S.C. 1531–1544, included its concurrence with the FHWA’s determination that the I-69 project was not likely to adversely affect the eastern fanshell mussel (*Cyprogenia stegaria*) and that the project was likely to adversely affect, but not jeopardize, the bald eagle. The USFWS also concluded that the project was not likely to jeopardize the continued existence of the Indiana bat and was not likely to adversely modify the bat’s designated Critical Habitat. These USFWS decisions were described in the Programmatic Biological Opinion issued on December 3, 2003, the Revised Programmatic Biological Opinion issued on August 24, 2006, and other documents in the Tier 1 project records. A Notice of Limitation on Claims for Judicial Review of these actions and decisions by the USFWS, DOI, was published in the **Federal Register** on April 17, 2007. The USFWS affirmed its decisions in the Amendment to the Revised Programmatic Biological Opinion issued on May 25, 2011. A Notice of Limitation on Claims for Judicial Review of these actions and decisions by the USFWS, DOI, was published in the **Federal Register** on July 20, 2011. A claim seeking judicial review of the Amendment to the Revised Programmatic Biological Opinion must have been filed by January 17, 2012, to avoid being barred under 23 U.S.C. 139(l)

For the Tier 2, section 5, 21 mile I-69 Project in Monroe County, an individual Biological Opinion was issued on July 25, 2013, which concluded that the Section 5 project was not likely to jeopardize the continued existence of the Indiana bat and was not likely to adversely modify the bat’s designated Critical Habitat. In addition, the USFWS issued an Incidental Take Statement subject to specific terms and conditions. The USFWS also issued a Bald Eagle Take Exempted under ESA permit (NO. MB218918-0) for the incidental take of the bald eagles for all sections of the I-69 project. The permit was effective as of June 25, 2009, and is subject to the terms and conditions of the Endangered Species Act section 7 incidental take statement and the August 24, 2006, Revised Programmatic Biological Opinion. The biological opinions, Bald Eagle permit no. MB218918-0, and other project records relating to the USFWS actions, taken pursuant to the Endangered Species Act, 16 U.S.C. 1531-1544, are available by contacting the FHWA, INDOT, or USFWS at the addresses provided above. The

Tier 2, section 5 Biological Opinion can be viewed and downloaded from the project Web site at <http://www.i69indyevn.org/section-5-feis/>

On July 24, 2013, USFWS issued “Amendment 2 To the Tier 1 Revised Programmatic Biological Opinion (RPBO dated August 24, 2006, previously amended May 25, 2011) for the I-69, Evansville to Indianapolis, Indiana highway” USFWS decided to issue the Amendment to the RPBO primarily due to the identification of two new Indiana bat maternity colonies in the Section 5 project area (which begins south of Bloomington near Victor Pike in Monroe County, Indiana and terminates south of State Road 39 south of Martinsville in Morgan County, Indiana). Additionally, the project identified increases to exempt level of forest and wetland impacts based on refinement of the Tier 1 RPBO estimates. Finally additional forest impacts were revealed within and adjacent to the Section 4 (which begins east of the intersection of U.S. 231 and SR 45/SR58 in Greene County, Indiana and terminates at SR 37 near Victor Pike in Monroe County, Indiana) project right-of-way due to private landowner tree-clearing actions. In light of this new information, USFWS chose to reevaluate impacts to the Indiana bat and to update the 2006 and 2011 Tier 1 RPBO and Incidental Take Statement. The Amendment 2 to the Tier 1 RPBO contains new analysis and comment for each of the sections of the 2006 Tier 1 RPBO affected by the new information, and USFWS affirmed that all other sections of the Tier 1 RPBO remain valid. Based on analysis of the new information, USFWS concluded that appreciable reductions in the likelihood of survival and recovery of Indiana bats due to the construction, operation, and maintenance of I-69 from Evansville to Indianapolis, Indiana are unlikely to occur, and hence, the FHWA has ensured that the proposed action is not likely to jeopardize the continued existence of the Indiana bat or destroy or adversely modify designated critical habitat. USFWS did not conduct any new analysis for either the bald eagle or eastern fanshell mussel (*Cyprogenia stegaria*), and the non-jeopardy conclusion regarding impacts to the bald eagle still stands as stated in the original Tier 1 Biological Opinion (dated December 3, 2003). The Amendment 2 To the Tier 1 Revised Programmatic Biological Opinion (RPBO dated August 24, 2006, previously amended May 25, 2011) for the I-69, Evansville to Indianapolis, Indiana highway can be found and downloaded from the project Web site at <http://www.i69indyevn.org/corridor-wide-technical-reports/>

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1)

Richard J. Marquis

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